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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,919	05/19/2006	Philippe Leferve	0600-1062	9816

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EXAMINER	
SUTTON, DARRYL C	
ART UNIT	PAPER NUMBER
1612	

NOTIFICATION DATE	DELIVERY MODE
04/07/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No.	Applicant(s)	
	10/579,919	LEFERVE ET AL.	
	Examiner	Art Unit	
	DARRYL C. SUTTON	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 February 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-22 and 24-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-22 and 24-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to the amendment filed 02/03/2011. No new claims have been added.

Applicant's arguments filed 02/03/2011 have been fully considered. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Claim Rejections - 35 USC § 103

(1) Claims 19-22, 24-27, 29, 30, 32-36 and 40-43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lydzinski et al. (US 2003/0099692) in view of McCready et al. (Anal. Chem., 1950).

Applicant argues that there is no reasoning provided for specifically selecting smooth pea starch from the starches of McCready. In paragraph [0009] Lydzinski very broadly describes a composition comprising a starch from a source such as cereals, tubers, roots, legumes and fruits. The Examples of Lydzinski are limited to modified high amylase or waxy corn starches. Thus Lydzinski fails to provide guidance for

selecting any starch with an amylose content of 30% to 45%. McCready fails to indicate any preference for smooth pea starch.

The Examiner disagrees.

A prior art reference is evaluated base on all that it reasonably discloses and is not limited to preferred embodiments or working examples. Accordingly, Lydzinski et al. is not limited to the Examples as alleged by Applicant. As cited by Applicant above, in paragraph [0009] Lydzinski broadly describes starch sources. However, one of the sources disclosed in paragraph [0009] is pea starch. Accordingly, one of ordinary skill would be motivated to use various forms of pea starch, and to at least try the pea starches of McCready, including the smooth pea starch.

Applicant argues that even if one would have randomly selected smooth pea starch from McCready, there would have been no expectation of the superior results of the claimed invention, as demonstrated in Table 3.

The Examiner disagrees.

Table 3 does not show the alleged unexpected results, since there is no way to access the differences in properties of the different film compositions. Although Applicant has submitted a declaration concerning the meaning of the data, i.e. “+++” representing best performance or excellent, and “0” representing the worst performance, and said declaration has been considered by the Examiner, there is no way to determine whether the difference between “+++” and “++” actually represents a statistically significant improvement which could be interpreted as an unexpected result,

or if the difference is simply due to the value/performance of one film simply being higher/better than the other. Since some degree of variation is expected when using different starch sources, a difference in properties of the resulting films would also be expected.

After analyzing, even assuming *arguendo* that unexpected results have been shown, the claims would not be commensurate in scope with those showings. The example of Table 3 demonstrates that a film comprised of hydroxypropylated pea starch or of hydroxypropylated fluidification-treated pea starch with between 35-39% amylose content provides an unexpected result. The claims, however, are substantially broader. Claims 19-22, 29-31 recite amylose contents of between 30 and 45%, 30 and 44%, between 35 and 40% and less 45. It is not clear that the unexpected results obtained with these specific hydroxypropylated pea starches with specific range of amylose content can be extrapolated to other types of hydroxypropylated pea starches more generally, or to hydroxypropylated pea starches with amylose contents less than the recited 35% or greater than the recited 39% since as the table reveals the amylose content and the specific modifications of the pea starch are critical in the performance of the resulting film coating.

Accordingly, the comparative evidence presented in the Table is not commensurate in scope with the claimed subject matter.

(2) Claims 31 and 44-46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lydzinski et al. and McCready et al. as applied to claims 19-22,

24-27, 29, 30, 32-36 and 40-43 above, and further in view of Fuentes et al. (US 6,469,161).

Applicant argues that Fuentes is completely silent about specific film-forming compositions and therefore does not remedy the shortcomings of Lydzinski et al. and McCready.

The Examiner disagrees.

The Examiner's response to Applicant's arguments concerning Lydzinski et al. and McCready et al. are provided supra. Accordingly, Fuentes et al. is only required to provide adequate motivation for combining with the other prior art. Since Fuentes et al. discloses fluidification processes for starchy materials, it provides adequate motivation for combining with Lydzinski et al. and McCready et al.

(3) Claims 19, 28, 37-39 and 47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Haasmaa et al. (US 2002/0032254) in view of McCready et al. (Anal. Chem., 1950), Leusner et al. (US 4,431,800) and Kim et al. (US 6,123,963).

Applicant argues that there is no reasoning provided for specifically selecting smooth pea starch from the starches of McCready. McCready fails to indicate any preference for smooth pea starch. Haasmaa fails to provide any guidance for the selection of starch with an amylose content from 30% to 45%, since it provides an exhaustive list of starch sources and discloses that the amylose content may be anywhere from 0% to 100%. Barley starches appear to be the preferred starch in the

Examples of Haasmaa. Neither Leusner nor Kim provides guidance for selecting a starch with an amylose content of 30-45%. .

The Examiner disagrees.

A prior art reference is evaluated base on all that it reasonably discloses and is not limited to preferred embodiments or working examples. Accordingly, Haasmaa et al. is not limited to the Examples as alleged by Applicant. As cited by Applicant above, Haasmaa et al. broadly describes starch sources. However, one of the sources disclosed is pea starch. Accordingly, one of ordinary skill would be motivated to use various forms of pea starch, and to at least try the pea starches of McCready, including the smooth pea starch.

Applicant argues that even if one would have randomly selected smooth pea starch from McCready, there would have been no expectation of the superior results of the claimed invention, as demonstrated in Table 3.

The Examiner disagrees.

The Examiner has responded to the allegation of unexpected results *supra*, and the response is applicable to this rejection.

No claims are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darryl C. Sutton whose telephone number is (571)270-3286. The examiner can normally be reached on M-Th from 7:30AM to 5:00PM EST or on Fr from 7:30AM to 4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass, can be reached at (571)272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Darryl C Sutton/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612